

144863



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Coranco, Inc.

**File:** B-244340

**Date:** September 17, 1991

Duane Ellermeyer for the protester.  
Terry Standridge, Department of Agriculture, for the agency.  
Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office  
of the General Counsel, GAO, participated in the preparation  
of the decision.

### DIGEST

Even assuming that protester's decision to not file a protest following receipt of oral information that may have formed the basis of its protest was reasonable because the agency led protester to believe that there was only a slight possibility that its bid "may be" rejected as nonresponsive, and that agency had not reached a final decision concerning its bid, protest to the General Accounting Office is untimely where initial agency-level protest against rejection of bid was filed more than 10 working days after protester received written notice of the rejection.

### DECISION

Coranco, Inc. protests the rejection of its low bid and the award of a contract to Gallenstein & Associates, Inc., under invitation for bids (IFB) No. 1010-82HW-91, issued by the Agricultural Research Service (ARS), Department of Agriculture, for the replacement or removal and disposal of underground fuel storage tanks at ARS' Meat Animal Research Center in Clay Center, Nebraska. ARS rejected Coranco's bid as nonresponsive because, although the IFB required that bid prices include all applicable federal, state, and local taxes, the protester included the phrase "Sales Tax Not Included" in its bid. The protester contends that its bid was improperly rejected because the notation merely indicated that in accordance with state law, ARS would be exempt from paying Nebraska sales tax on goods incorporated into the project.

We dismiss the protest.

Coranco submitted the apparent low bid at bid opening on April 30, 1991. Written immediately next to its bid price, Coranco inserted the phrase, "Sales Tax Not Included." During

a telephone conversation on May 1, the contracting officer informed the protester that the notation "may" have rendered Coranco's bid nonresponsive.<sup>1/</sup> In a May 8 letter, received by Coranco on May 10, the contracting officer rejected Coranco's bid, specifically explaining that the notation rendered the protester's bid nonresponsive. By separate letter dated May 21, received by Coranco on May 22, ARS informed Coranco of the award to Gallenstein and again explained that its bid had been rejected because the notation rendered Coranco's bid nonresponsive. On May 28, Coranco filed a written agency-level protest with the contracting officer, objecting to the rejection of its bid. After ARS denied that protest in a letter received by Coranco on May 31, Coranco filed this protest in our Office on June 5. The agency has suspended performance of the contract pending resolution of this protest.

A protest concerning other than an alleged solicitation impropriety must be filed within 10 working days after the basis of protest is known or should have been known. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1991). In this regard, a protester's receipt of oral information forming the basis of its protest is sufficient to start the 10-day time period running; written notification is not required. Swafford Indus., B-238055, Mar. 12, 1990, 90-1 CPD ¶ 268, aff'd, B-238055.2, July 30, 1990, 90-2 CPD ¶ 79. Our Regulations further provide that a matter initially protested to the contracting agency will be considered only if the initial protest to the agency was filed within the time limits for filing a protest with our Office. Tandy Constr., Inc., B-238619, Feb. 22, 1990, 90-1 CPD ¶ 206.

To be timely under our Regulations, Coranco's agency-level protest would have to have been filed by May 15, within 10 working days from May 1, when it first learned of the basis of its protest during the telephone conversation with ARS.

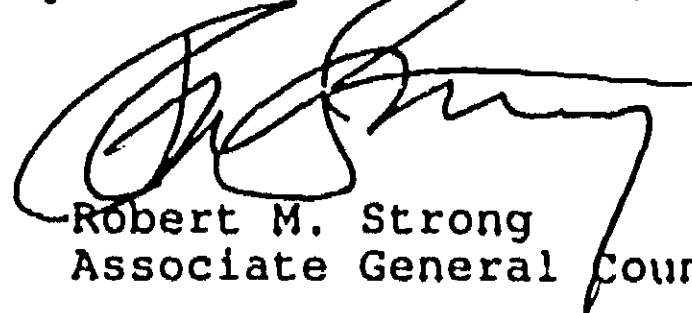
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<sup>1/</sup> In a May 6 letter, apparently submitted in response to the telephone conversation, the protester explained its notation. According to Coranco, approximately \$72,573 of its bid attributable to materials and equipment would normally be subject to a 5 percent sales tax, totaling approximately \$3,628; Coranco was required to omit sales taxes applicable to projects involving Nebraska state and other government entities; and Coranco "assumed this to also be the case with" ARS contracts.

Since Coranco did not file its written<sup>2/</sup> agency-level protest until May 28, its protest was untimely filed.

Even assuming that Coranco reasonably decided to not file a protest following receipt of the agency's oral notification because, by informing the firm that its bid "may be" nonresponsive, ARS arguably led Coranco to believe that there was only a slight possibility that its bid might be rejected and that ARS had not reached a final decision, Coranco's agency-level protest was nevertheless untimely since Coranco did not protest to ARS in writing until May 28, more than 10 working days after May 10 when it received the agency's notice rejecting its bid.<sup>3/</sup>

The protest is dismissed.



Robert M. Strong  
Associate General Counsel

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<sup>2/</sup> Since Federal Acquisition Regulation (FAR) § 33.101 provides for written protest objections only, we need not address Coranco's arguments concerning oral objections against the rejection of its bid that may have been raised with the agency on its behalf prior to Coranco filing its written protest. See Clean Air, Inc.--Second Recon., B-242582.4, May 20, 1991, 91-1 CPD ¶ 481.

<sup>3/</sup> While Coranco states that the agency did not advise it of the 10-day filing requirement, prospective contractors are on constructive notice of our Regulations since they are published in the Federal Register and Code of Federal Regulations. See Chapman Smidt Hardware, Inc.--Recon., B-237888.2, Jan. 8, 1990, 90-1 CPD ¶ 35. In addition, we note that section L.8 of the IFB, "Service of Protest," directed bidders to part 33 of the FAR, which sets out the requirements for filing an agency-level protest, including the 10-day filing requirement, and refers to our Regulations as well.